

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

REGIS INSURANCE COMPANY,

Plaintiff,

V.

**P&C GROCERS, INC.,
CHARLES PARKER, and
CECILIA GIBBS,**

Defendants

**CIVIL ACTION NO.
1:06-cv-125-MEF**

**P&C GROCERS, INC., AND CHARLES PARKER’S RESPONSE TO REGIS
INSURANCE COMPANY’S SUPPLEMENT TO ITS REPLY IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

COME NOW Defendants P&C Grocers, Inc. (“P&C”), and Charles Parker (“Parker”) and file this Response to Regis Insurance Company’s Motion for Leave to Supplement and Supplement to Its Reply in Support of Motion for Summary Judgment, and as grounds say as follows:

1. The issue before the Court is primarily one of jurisdiction and ripeness. Regis Insurance Company (“Regis”) attempts to use equitable arguments to obfuscate the fact that the Court cannot constitutionally determine whether Regis had a duty to indemnify. If no constitutional “case or controversy” exists, the Court has no equitable power to exercise. “[T]he duty to indemnify is not ripe for adjudication until the insured is in fact held liable in the underlying suit.” Auto-Owners Ins. Co. v. Toole, 947 F.Supp. 1557 (M.D. Ala. 1996) (quoting Nationwide Insurance v. Zavalis, 52 F.3d 689, 693 (7th Cir. 1995)).

2. Because the Court cannot address the indemnification issue, the Court should also refrain from rendering judgment on the duty to defend issue this close to trial in the underlying case. P&C and Parker have not admitted that Regis has no duty to defend; P&C and Parker are arguing that that question should not even be reached under the circumstances of this case.

WHEREFORE, PREMISES CONSIDERED, P&C and Parker respectfully request that the Court enter an order denying summary judgment in Regis' favor.

Respectfully submitted this 21st day of November, 2006.

s/ James Douglas McElvy
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CERTIFICATE OF SERVICE

I certify that on November 21, 2006, the foregoing was electronically filed with the Clerk of the Court of the Middle District of Alabama using the CM/ECF system which will send notification of such filing and/or that a copy of the foregoing has been served by United States Mail, properly addressed and postage prepaid to the following:

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